

OCT 09 2008

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6017

DATE COMPLAINT FILED: May 21, 2008

DATE ACTIVATED: June 24, 2008

DATE OF NOTIFICATION: May 28, 2008

LAST RESPONSE RECEIVED: None

**EXPIRATION OF SOL: September 28, 2012-
January 29, 2013**

PRE-MUR: 471

DATE ACTIVATED: June 24, 2008

**EXPIRATION OF SOL: September 28, 2012-
January 29, 2013**

RAD REFFERAL: 08L-26

DATE ACTIVATED: June 24, 2008

**EXPIRATION OF SOL: September 28, 2012-
January 29, 2013**

SOURCES:

Internally Generated

RESPONDENTS:

Christopher J. Ward

**RELEVANT STATUTES AND
REGULATIONS:**

2 U.S.C. § 432(b)(3)

2 U.S.C. § 432(c)

2 U.S.C. § 432(d)

2 U.S.C. § 432(h)(1)

2 U.S.C. § 434(b)

2 U.S.C. § 441a(a)(1)(C)

2 U.S.C. § 441a(a)(4)

2 U.S.C. § 441a(f)

11 C.F.R. § 102.9

11 C.F.R. § 102.15

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11 C.F.R. § 103.3(a)
11 C.F.R. § 103.3(b)
11 C.F.R. § 103.3(b)(3)
11 C.F.R. § 104.3(b)
11 C.F.R. § 104.14(d)
11 C.F.R. § 110.1(d)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: _____

I. INTRODUCTION

On May 21, 2008, Prosperity Helps Inspire Liberty Political Action Committee and Lisa Lisker, in her official capacity as treasurer, ("PhilPAC") a multicandidate political committee, filed a _____ submission through counsel voluntarily disclosing misappropriated committee funds by its former treasurer, Christopher J. Ward, and associated misreporting of receipts and disbursements by PhilPAC in reports filed with the Commission. On August 18, 2008, PhilPAC voluntarily supplemented its original submission with additional information about the facts and circumstances surrounding the misappropriation and misreporting. PhilPAC's original _____ submission and its supplement are hereinafter referred to as "the submission." According to PhilPAC, in addition to misappropriating committee funds, Ward intentionally failed to deposit a \$1,500 check into PhilPAC's bank account, which he disclosed as a receipt in the Committee's reports. In addition, due to Ward's unauthorized withdrawals, failure to deposit funds, and failure to file accurate disclosure reports, PhilPAC bounced checks to vendors and incurred bank fees, which were not disclosed by Ward in reports filed with the Commission. Last, PhilPAC alleges that Ward received and deposited a contribution exceeding the limits set forth at 2 U.S.C. § 441a(a)(1)(C), and that PhilPAC has since timely refunded the excessive contribution and disclosed the receipt and refund.

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During the calendar year 2007, Ward apparently misappropriated \$17,000 from PhilPAC. Based on the submission, Ward concealed his misappropriations and reporting omissions, which were not discovered until the Committee conducted an internal audit. PhilPAC promptly notified the Federal Bureau of Investigation of the apparent embezzlement. Shortly thereafter, PhilPAC notified the Commission of Ward's illegal activities and amended the inaccurate disclosure reports. It appears that Ward's activities in these matters may be part of an overarching embezzlement scheme devised by Ward. See Pre-MUR 470 (NRCC), First General Counsel's Report, dated September 10, 2008; Pre-MURs 465, 466, 467, 468 (Tuesday Group PAC, *et al.*), First General Counsel's Report, dated September 10, 2008.

PhilPAC filed a complaint _____ against Ward, which was designated MUR 6017 and mailed to Ward. We have confirmed with counsel that Ward will not be filing a response to the complaint. In addition, on June 17, 2008, we received a referral from the Reports Analysis Division ("RAD") concerning the identical misappropriation of funds and misreporting allegations contained in PhilPAC's submission.

1 We also recommend that the Commission find reason to believe that Christopher J. Ward
2 knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), (c), (d), (h)(1), 434(b) and 11 C.F.R.
3 § 104.14(d) by commingling committee funds with his personal funds, failing to deposit funds,
4 failing to keep account of and disclose certain disbursements in reports filed with the Commission,
5 and failing to file timely, complete and accurate reports. Last, we recommend that the Commission
6 authorize the use of compulsory process to obtain additional information regarding Ward's
7 embezzlement schemes and the resulting reporting and recordkeeping omissions.

8 **II. FACTUAL SUMMARY**

9 **A. Misappropriations and Related Misreporting**

10 PhilPAC is a multicandidate political committee that has been filing reports with the
11 Commission since 2002. 2 U.S.C. § 441a(a)(4). Ward served as PhilPAC's treasurer since the
12 PAC's inception on March 22, 2002 until his termination on February 2, 2008. See Submission,
13 August 18, 2008. Ward's duties included maintaining the books and records of PhilPAC, as well
14 as ensuring compliance with the Federal Election Campaign Act of 1971, as amended, ("the
15 Act") and the Commission's regulations. *Id.* Ward received \$500 a month compensation from
16 PhilPAC in exchange for the performance of his duties, and all payments to Ward for his services
17 as treasurer have been properly disclosed to the Commission. *Id.* Bob Holste, volunteer PAC
18 manager, supervised Ward from March 22, 2002 until May 5, 2007. *Id.* Annette Carr, present
19 PAC manager, supervised Ward from May 5, 2007 until his termination. *Id.*

20 Upon learning from media reports of the alleged misappropriations with the National
21 Republican Congressional Committee ("NRCC") and other committees that Ward served, Carr
22 fired Ward effective February 2, 2008 in a letter dated February 4, 2008. *Id.* Thereafter, the
23 current treasurer conducted an internal audit and discovered that Ward embezzled a total of

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1 \$17,000 of Committee funds. See Submission, May 19, 2008. Ward wrote himself two checks
2 which were not authorized by the Committee: check #1250 dated September 28, 2007 in the
3 amount of \$7,000 and check #1253 dated October 29, 2007 in the amount of \$10,000. *Id.* These
4 checks were not disclosed by Ward in reports filed with the Commission, and according to the
5 submission, Ward's failure to disclose the checks was an attempt to conceal the unauthorized
6 payments. *Id.*

7 The submission further alleges that Ward failed to deposit into its bank account a \$1,500
8 check from Tuesday Group PAC, which Ward disclosed in PhilPAC's 2007 Year-End Report.
9 *Id.* PhilPAC has no information regarding where the original check may have been deposited (if
10 anywhere). *Id.* There is insufficient information at this time to determine whether the missing
11 Tuesday Group PAC check was part of Ward's embezzlement scheme. However, Tuesday
12 Group has since issued a new check, and it was deposited into PhilPAC's bank account on May
13 8, 2008. *Id.*

14 Due to Ward's misappropriations and misreporting, PhilPAC bounced two checks to a
15 vendor in December 2007 and incurred additional bank fees in the amount of \$60.76. *Id.* Ward
16 failed to disclose these bank fees in PhilPAC's disclosure reports. *Id.*

17 **B. PhilPAC's Internal Controls**

18 Prior to the discovery of Ward's misappropriations, PhilPAC's internal controls appear to
19 have been minimal at best. According to the submission, the controls consisted of periodic
20 reports from Ward to the PAC manager concerning account balance updates, reports of certain
21 contributions, and review of FEC reports. See Submission, August 18, 2008. It is unclear from
22 the submission whether the PAC manager independently reviewed the FEC reports or whether
23 Ward imparted information contained in the FEC reports to the PAC manager. *Id.* These acts

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1 were not performed with regularity, and generally were given in response to a specific request
2 from the PAC manager. *Id.* Perhaps most importantly, there was no independent review of the
3 documents underlying any of the reports. *Id.* For example, no one reconciled the bank
4 statements to the accounting records or to the disclosure reports prior to filing. *Id.*

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10 **C. Contribution from Jerry Weller for Congress**

11 On January 29, 2008, Ward deposited a \$15,000 contribution from Jerry Weller for
12 Congress, which exceeded the Act's limits on contributions to political committees set forth at
13 2 U.S.C. § 441a(a)(1)(C). See Submission, August 18, 2008. On February 8, 2008, four days
14 after Ward was terminated, PhilPAC refunded the entire contribution to the contributor and
15 subsequently disclosed both the receipt and refund in its reports filed with the Commission. *Id.*
16 Our internal review of disclosure reports filed with the Commission reveals that Jerry Weller for
17 Congress did not disclose the making of the \$15,000 contribution, but did disclose the receipt of
18 PhilPAC's refund of the contribution.

19 The submission attached a copy of the contribution check from Jerry Weller for Congress
20 as well as copies of Ward's embezzlement checks. Upon close examination of the signatures on
21 all three checks, it appears that Ward may have signed the contribution check from Jerry Weller
22 for Congress, but we have not been able to confirm that. Attachment 1. It is unclear how Ward
23 may have had access to the Jerry Weller for Congress checkbook. Although Jerry Weller for

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1 Congress disclosed disbursements to Ward's company, Political Compliance Services, for the
2 performance of administrative and compliance services in October and November 2007, there is
3 no indication that Ward served as treasurer of this committee at any time.

4 **III. LEGAL ANALYSIS**

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B. Liability of Christopher J. Ward

According to Commission policy and practice, a former treasurer may be named as a respondent in his personal capacity when it appears that, while serving as a treasurer, he may have violated obligations imposed by the Act or Commission regulations personally on a treasurer and where, among other situations, the violations were knowing and willful. See *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3 (January 3, 2005); see, e.g., MUR 5610 (Earl Allen Haywood), MUR 5721 (Lockheed Martin Employees' PAC) and MUR 5971 (Lindsey Graham for Senate). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In

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1 *Hopkins*, the court found that an inference of a knowing and willful violation could be drawn
2 "from the defendants' elaborate scheme for disguising their . . . political contributions. . ." *Id.* at
3 214-15. The court also found that the evidence did not have to show that a defendant "had
4 specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of
5 mind," if there were "facts and circumstances from which the jury reasonably could infer that
6 [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United*
7 *States v. Bortelon*, 871
8 F.2d 491, 494 (5th Cir.), *cert. denied*, 493 U.S. 838 (1989)).

9 The available information suggests that Ward attempted to disguise his embezzlement by
10 not disclosing the unauthorized transactions in Committee reports filed with the Commission.
11 Therefore, we recommend that the Commission make knowing and willful findings as to Ward in
12 his personal capacity in connection with violations of the Act and Commission regulations while
13 performing the duties of treasurer of PhilPAC.

14 As treasurer, Ward was required to accurately keep an account of and disclose
15 disbursements. See 2 U.S.C. §§ 432(c), (d), 434(b)(3), (4), (5), (6)(B) and 11 C.F.R. § 104.3(b).
16 Further, he was required to deposit all committee receipts in PhilPAC's designated bank account.
17 2 U.S.C. § 432(h)(1) and 11 C.F.R. § 103.3(a). Committee treasurers required to file any report
18 or statement under the Act and the Commission's regulations are also personally responsible for
19 the timely and complete filing of the report or statement and for the accuracy of any information
20 or statement contained in it. 11 C.F.R. § 104.14(d). It appears Ward knowingly and willfully
21 failed to keep an accurate account of all disbursements with respect to his activities as treasurer
22 of PhilPAC in order to hide his fraudulent scheme and failed to accurately disclose certain

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1 disbursements in reports filed with the Commission. In addition, Ward failed to deposit all
2 receipts into the PhilPAC's bank account.

3 The Act also prohibits the commingling of committee funds with the "personal funds of
4 any individual," including officers of a committee. 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15.
5 The Commission has previously made findings that respondents have violated 2 U.S.C.
6 § 432(b)(3) in matters where individuals misappropriated committee funds by making
7 unauthorized disbursements to themselves or others to pay for personal expenses. *See, e.g.*,
8 MUR 5610 (Dale), MUR 5721 (Lockhead Martin Employees PAC), MUR 5811 (Dogeit for
9 Congress), MUR 5814 (Lamatt for Congress), MUR 5872 (Hague for Congress), MUR 5920
10 (Women's Campaign Fund), and MUR 5971 (Lindsey Graham for Senate). *But see, e.g.*, MUR
11 5898 (Ryan Pennington) (The Commission voted 3-3 not to accept the negotiated conciliation
12 agreement with the embezzler, which included an admission to knowingly and willfully violating
13 2 U.S.C. § 432(b)(3), where the embezzler deposited committee funds to his personal account
14 from a third-party intermediary account with a separate legal existence).

15 Based on information contained in the submission, Ward knowingly and willfully
16 misappropriated committee funds by writing himself checks from PhilPAC's account without
17 authorization. It appears that Ward either cashed the checks or deposited them into his personal
18 bank account.

19 Accordingly, we recommend that the Commission find reason to believe that Christopher
20 J. Ward knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), (c), (d), (h)(1), 434(b) and 11
21 C.F.R. § 104.14(d) by commingling committee funds with his personal funds, failing to keep
22 account of and disclose disbursements in reports filed with the Commission, failing to deposit

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1 receipts into the committee's bank account, and failing to file timely, complete and accurate
2 reports with the Commission.

3 Ward is also a respondent in Pre-MUR 470 (NRCC) and Pre-MURs 465, 466, 467, 468
4 (Tuesday Group PAC, *et al.*). The First General Counsel's Reports in these matters were
5 submitted to the Commission on September 10, 2008, but have not yet circulated. In addition,
6 there are other matters involving allegations of misappropriations by Ward which will be
7 forthcoming. RR 08L-27/Pre-MUR 476/MUR 6063(SAXPAC) and RR 08L-30(LUISPAC).

8 **C. Contribution from Jerry Weller for Congress**

9 As discussed *supra*, on January 29, 2008, Ward deposited a check from Jerry Weller for
10 Congress dated January 28, 2008 in the amount of \$15,000 into PhilPAC's bank account. The
11 Act limits contributions to political committees to \$5,000, in the aggregate, in any calendar year.
12 2 U.S.C. § 441a(a)(1)(C) and 11 C.F.R. § 110.1(d). The treasurer shall ascertain whether
13 contributions received, when aggregated with other contributions from the same contributor,
14 exceed the Act's contribution limits. 11 C.F.R. § 103.3(b). Contributions which on their face
15 exceed the Act's contribution limitations and contributions which do not appear to be excessive
16 on their face, but which exceed the Act's contribution limits, when aggregated with other
17 contributions from the same contributor, may be either deposited into a campaign depository
18 under 11 C.F.R. § 103.3(a) or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If any such
19 contribution is deposited the treasurer may request redesignation or reattribution of the
20 contribution by the contributor as appropriate. *Id.* If a redesignation or reattribution is not
21 obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution,
22 refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3).

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1 On February 8, 2008, ten days after receiving the check, PhilPAC's current treasurer
2 identified the check as an excessive contribution and refunded the entire amount to the
3 contributor. PhilPAC disclosed both the deposit and refund of this contribution in its reports
4 filed with the Commission. Accordingly, PhilPAC has met the requirements of 11 C.F.R.
5 § 103.3(b)(3) by refunding the contribution to the contributor within sixty days of receipt.
6 Therefore, we recommend that the Commission find no reason to believe that Prosperity Helps
7 Inspire Liberty Political Action Committee and Lisa Lisker, in her official capacity as treasurer,
8 violated 2 U.S.C. § 441a(f). Unless and until we obtain additional information regarding whether
9 the contribution check was authorized by the committee, we make no recommendations to the
10 Commission at this time with respect to Jerry Weller for Congress in connection with its failure
11 to disclose the contribution pursuant to 2 U.S.C. § 434(b). Further, we make no
12 recommendations to the Commission at this time with respect to Ward in connection with the
13 contribution from Jerry Weller for Congress, because as discussed in more detail *infra*, we have
14 insufficient information concerning the facts and circumstances surrounding Ward's
15 involvement, if any, in the making of the contribution and whether he possibly misappropriated
16 funds from that committee.

17 **IV. PROPOSED INVESTIGATION**

18 We do not have sufficient information from the submission to allow the Commission to
19 proceed directly to pre-probable-cause conciliation. While the amount in violation in this matter
20 appears at this time to be relatively low, we recommend going forward with an investigation
21 because it is not clear how, if at all, Ward's various embezzlements are interrelated. The
22 embezzlement may be intertwined with an overarching embezzlement scheme devised by Ward.
23 Because at this point we do not know the full extent of Ward's embezzlement scheme, we

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1 cannot be certain of the full amount in violation in this matter. An investigation of Ward in
2 connection with this matter and Pre-MUR 470 involving the NRCC and Pre-MURs 465, 466,
3 467 and 468 involving four other leadership PACs, may reveal that he made further unauthorized
4 transactions from these committees which have not yet been discovered.

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6 In addition, the appearance of Ward's signature on Jerry Weller for
7 Congress' contribution check, when Ward was not serving in any official capacity for that
8 committee, suggests that the contribution may not have been an authorized disbursement of
9 committee funds. Given also that Jerry Weller for Congress did not disclose the making of the
10 contribution, we believe that an investigation is warranted to determine whether Ward
11 misappropriated funds from Jerry Weller for Congress or if their account was used by Ward to
12 facilitate other thefts.

13 Therefore, we recommend that the Commission authorize the use of compulsory process.
14 Our investigation would be focused on getting a full picture of Ward's scheme.

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17 Accordingly, we request that the Commission authorize the issuance of
18 appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.

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V. RECOMMENDATIONS

MUR 6017:

1. Find reason to believe Christopher J. Ward knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), (c), (d), (h)(1), 434(b), and 11 C.F.R. § 104.14(d).
2. Approve the attached Factual and Legal Analysis.
3. Authorize the use of compulsory process in this matter, including the issuance of interrogatories, document subpoenas, deposition subpoenas and orders.

4. Approve the appropriate letters.

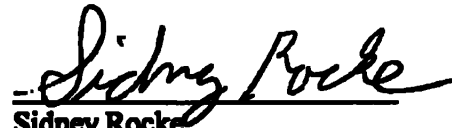
Thomasenia P. Duncan
General Counsel

10/09/08
Date

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